Introduction

When thinking of the Museum of Modern Art in midtown Manhattan, images of priceless and thought-provoking paintings and sculptures may come to mind. However, the MoMA is both a museum and also a property-owning organization which has undergone significant expansion in the past thirty-two years. Most recently, a new high-rise building which would include galleries was conceptualized. The proposed tower’s name is Tower Verre.

The zoning approval process for the Tower Verre took place in 2009. The museum, along with the internationally renowned architect, Jean Nouvel, and the project’s developer, Hines Interests, requested project approval for the tower. The West 54-55 Street Block Association (BA), representing residents in the West Fifties between Fifth Avenue and the Avenue of the Americas, sought a height reduction in the planned building.

The BA, formed in 2004, is located in a “special midtown district” with historic residential and commercial properties. In 1982, the area was rezoned as a Preservation Sub-District (PsubD) by the Department of City Planning (DCP).

The Uniform Land Use Review Procedure

Land use and development decisions in New York City are subject to review by the Uniform Land Use Review Procedure (ULURP). The process went into effect in 1976 after a revision in the New York City Charter. Revised in 1989, ULURP is “legislatively memorialized” in Jane Jacobs’s book, The Death and Life of Great American Cities. Involving the Department of City Planning, the applicable community board, the Office of the Borough President, the City Planning Commission, City Council, the mayor and public hearings, ULURP is designed to strongly support a community-oriented approach to urban planning.

Andrew Manshel and Tom Angotti have questioned the validity of applying ULURP, a theory largely developed almost 50 years ago, to an ever-changing urban center with 21st century environmental and social problems, as well as major technological advances. Contrary to these perspectives, England’s Conservative Government has extolled and is currently utilizing Jane Jacobs’ approach, as reflected in the government’s “Big Society” legislation. In fact, England’s design decentralizes power by giving local communities the responsibility and funding to manage some of the appropriate functions.

The MoMA Complex – A Partial History

In 1979, the MoMA began to expand its holdings. It first sold its unused air rights for $17 million to the developer who built the Museum Tower (MT), the first addition to the MoMA complex. Both the MoMA and the MT front on West 53rd Street between Fifth Avenue and the Avenue of the Americas. Construction of the MT began in 1980 and was completed in 1985. The 55-floor tower, designed by architect César Pelli, contains condominiums over six floors of galleries and two loading docks on West 54th Street.

Relevant to the MT’s construction is Section 81-00, the “General Purposes” section of the Zoning Resolution for the City of New York. In this document, the City Planning Commission strongly advocates that “the historic pattern of
Neighboring Buildings on 54th Street
Photograph credit: Benjamin Polen

The mid-block Tower Verre construction has not yet begun, but from the beginning, the project has encountered considerable opposition. At community hearings, a part of the ULURP process, some citizens stated that they do not want the tower’s shadow to cast into Central Park. Other residents are concerned about traffic problems, light reduction and noise issues they say the tower and its loading docks will create.

Tower Verre also has many proponents. Some look forward to the architecture of the building. Per the New York Times, “the building’s skin will contain a faceted exterior that tapers to a set of crystalline peaks at the apex of the tower.” Writer Nicolai Ouroussoff called the project “one of the most exciting additions to New York’s skyline in a generation.” Some environmentalists are also enthusiastic about the tower, since wind power and rain water will reportedly be used for everyday needs, such as plant watering.

As for the architect, Jean Nouvel was quite surprised about the BA’s concern over the tower’s height. “Why is Manhattan, of all places, afraid of heights?” he asked. He went on to explain, “I am someone who tries to be a contextual architect. I’m always trying to figure out how to reveal the beauty of the surroundings.” In his view, the Tower Verre is unique, and it will define where the MoMA is via relatively low building bulk in mid-block locations, compared to avenue frontages, “should be maintained. However, this document was written after the development plans for the MT were approved. In retrospect, allowing the MT to be built mid-block encouraged an increase in buildings in the PsubD which don’t conform to Section 81-00, a precedent that has affected 53rd and 54th Streets, as well as the surrounding area.

In 2000, the museum sought and was granted a rezoning edict that removed West 53rd Street on the north side from the PsubD. For some time, the MoMA purchased available properties to its west to build to a second addition to the complex. This addition replaced the Dorset Hotel and several townhouses that were less than 100 feet high.

Construction of a third building, a 16-story, 245-foot structure located to the west of the MT, began in 2000 and was largely completed in 2004. However, its education wing was not finished until 2006. The building includes commercial space and six floors of galleries, as well as four new loading docks which replace two older docks.

The Tower Verre Project

The museum continued to acquire properties and often remove the buildings that stood on the land. When sufficient land was accumulated between West 53rd Street (north) and West 54th Street (south), it was merged into a 17,000 square foot lot. In 2007, the lot was sold to Hines Interests for $125 million.

During a March 2007 meeting with the BA at the MoMA, the museum staff proposed a 25-26 story “as-of-right” building. As a move intended to be a strategic compromise, the BA later recommended a 38-floor tower to the City Council. These height recommendations were considered by Hines, but the developer instead planned to develop on the lot a mixed-use building to contain three floors of galleries for MoMA, as well as a five-star hotel and condominiums. Since it was not an “as-of-right” project, the MoMA-Hines development effort required special permits to allow for rezoning. As an “as-of-right” building does not mandate review by a community board, the City Planning Commission or City Council.

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10 A 38-floor tower is equivalent in height to the CBS building that is located on West 53rd Street (south) across from the MoMA complex.
a design that illustrates “new forms of expression” and “verticality.”

Meanwhile, in April of 2010, Mayor Michael Bloomberg appointed a Charter Revision Commission which may rewrite the land-use process in New York. As a part of this effort, the commission could overhaul ULURP, since its lengthy public evaluation weighs on development projects both large and small. Many developers are in favor of this; environmental reviews could be considerably less burdensome, for example. Numerous planners, however, want greater community involvement than is now required, and some favor having the community benefits agreements formally integrated into ULURP. New York City Councilmember Brad Lander agrees with this perspective, saying he would “fight tooth and nail to prevent the weakening of the community’s role in the process.”

Fortuitously, a portion of the 17,000 foot lot’s underlying land was found to be subject to C-6 zoning which allows high-bulk commercial uses in central locations. This permitted a merged lot without direct avenue access to be avenue-zoned. More lenient height restrictions were then also relevant.

By appealing to the Landmark Preservation Commission (LPC), Hines was able to transfer the development rights of the landmarked Saint Thomas Church and the American Folk Art Museum. The developer also transferred the development rights of the landmarked University Club. In each transaction, Hines negotiated the air rights fee directly with the transferor.

Right transfers to the development site allowed Hines to set the building’s height at 1,250 feet, a height comparable to that of the Empire State Building. The City Planning Commission reviewed the project in September 2009, and mandated that the tower be made 200 feet shorter than proposed, thereby permitting a 1,050 foot building. This future building’s height will be three feet higher than Manhattan’s Chrysler building.

The BA’s Involvement

The BA members identified, evaluated and monitored Hines’ planning and zoning strategies by reviewing publicly released documents. Their goal was to determine the short and long-term impacts of the project upon the community. They also attempted to ascertain if, and to what extent, the developer would comply with the city’s mid-block zoning recommendations of maintaining “a historic pattern of relatively low building bulk in mid-block locations, compared to avenue frontages.”

The BA’s lack of sufficient funding prevented it from obtaining critical data, such as the documentation of traffic, pollution and noise levels. However, the BA, as well as Community Board 5, assumed that the EIS would offer a definitive record of the proposed tower’s
impact upon the neighborhood. All things considered, the EIS did not meet the BA's expectations. For example, the EIS traffic study on West 53rd and West 54th Streets did not extend from river to river. The EIS also did not examine the cumulative effect of development upon the area’s educational, library and public safety needs, one of the many factors which concerned the BA and Community Board 5.

In the course of the ULURP process, public hearings were held. Per ULURP, the BA provided relevant information to the following city agencies: the Department of City Planning, Community Board 5, the Manhattan Borough President’s Office and the City Planning Commission. Throughout the process, the BA sought and received guidance and assistance from Community Board 5, the district’s City Council Member, representatives of the New York State Assembly and the New York State Senate. Preservationist organizations, including the Historic Districts Council and Landmark West!, also provided support and advice.

The New York City Council’s Consideration

On October 28, 2009, the New York City Council considered the MoMA-Hines project during a council session at City Hall. After a period of discussion, the Council voted to support MoMA-Hines.

Although only three council members out of 47 voted for the BA’s established position on building height, the City Council received letters supporting the BA from the BA’s State Senator, Assemblyman, Community Board 5 and several historic districts. Encouraged by this backing, the BA teamed with the Coalition for Responsible Midtown Development and various individuals from the community. This consortium then prepared to file a lawsuit in hopes of preventing the Council’s action for Tower Verre from going forward.

The BA was represented by an attorney whose services were funded by contributions raised by the BA. A new lawsuit was prepared and filed with the DCP within the mandatory three months’ time. City Planning then considered the suit and voted to reject it. The BA challenged the decision, but the presiding judge who heard the case also turned down the suit. The specific reasons for these decisions are not known. At that point in time, due in part to limited financial resources, the BA and its supporters reluctantly decided to no longer contest the Tower Verre project.

Summary

Largely due to the City of New York’s Zoning Resolution for Special Midtown Districts, the BA members initially thought that they had an advantage over the MoMA-Hines team as they sought appropriate scale for the Tower Verre. This, however, did not prove to be the case.

A related planning and zoning issue was raised by Justin Davidson in “The Endangered Ordinary.” He argued that in a typical New York City block, the collection of small buildings with a wide variety of products and services like ethnic restaurants, clothing boutiques, shoe repair shops and bodegas is a rapidly disappearing neighborhood feature. Although numerous tourists and New Yorkers alike enjoy the presence of small, eclectic shops, many of these businesses are being replaced by “big stores” and “big banks.” As a result, the small store settings are becoming increasingly rare.

Since ULURP includes public notification and hearings, BAs and individual citizens can strive to ensure that the urban mix of small shops that New York City exemplifies is retained. And, as the Tower Verre example illustrates, ULURP does not guarantee project modifications, so communication to New York City politicians about how ULURP could be improved is also critical.

The Tower Verre project is proceeding. In July 2011, Hines filed a new set of plans with the DCP. The plans accommodate the 1050 foot height limitation, as well as DCP-mandated changes on the building’s loading dock. The paperwork submitted is a “chair certification,” meaning no public feedback is required at this stage of the project.

The 78-floor structure will have 480,000 square feet of residential space. Some apartments will be duplexes or triplexes. Also included will be 100 hotel rooms, a restaurant in the lobby and 52,000 square feet for MoMA. At this writing, the start date for the tower’s construction is not publicly known.